

**State Board of Equalization**

**OPERATIONS MEMO**

For Public Release

No: 1119

Date: November 10, 2004

Revision Date: June 30, 2008

**SUBJECT: CLAIMS FOR REFUND HEARING PROCEDURES**

**I. GENERAL**

The purpose of this operations memo is to advise Board staff of the procedures to be followed regarding the denial of a claim for refund and the granting of an appeals conferences and/or Board hearings on claims for refund. These procedures are intended to:

1. Ensure complete due process when a claim for refund is filed, and
2. Incorporate the provisions of chapter 2, article 3, of the Rules for Tax Appeals, which are applicable to claims for refund, effective February 8, 2008.

As used in this Operations Memo:

“Refunds” means the Sales and Use Tax Department’s Audit Determination and Refund Section or the Property and Special Taxes Department’s Environmental Fees Division’s Audit Unit, Excise Taxes Division’s Refund and Petition Group, Fuel Taxes Division’s Refund Group, Investigations Division, or County-Assessed Properties Division’s Timber Tax Unit, as applicable.

**II. HEADQUARTERS’ PROCEDURES**

Claims for refund that are received in headquarters will continue to be handled in accordance with established policy and procedures. In general, action may be taken on a claim for refund once the tax liability has been fully paid or an overpayment has occurred. The procedures below are to be followed with respect to the denial of a claim for refund and the granting of oral hearings (appeals conference or Board hearing).

**A. Claimant Files a Claim For Refund and Does Not Request an Appeals Conference and/or a Board Hearing**

Once a claim for refund is received Refunds will promptly notify the claimant that the claim has been received by sending an acknowledgement letter. If documentary evidence is needed to verify the claim, Refunds will also request documentation from the claimant to support the claim (Cal. Code Regs., tit. 18, §§ 5234 and 5234.5).

1. No documentation provided to support claim for refund.

Refunds will send a follow-up letter to the claimant referencing the acknowledgment letter requesting documentation. The claimant will

be advised that if documentation is not provided within 30 days of the date of the letter, the claim for refund will be denied. The follow-up letter will contain a statement informing the claimant that he/she may request an appeals conference and/or Board hearing. The Rules for Tax Appeals permit the claimant to request an appeals conference and/or Board hearing to further contest the recommended denial (Cal. Code Regs., tit. 18, § 5235).

If documentation is not provided and the claimant has not requested an appeals conference and/or Board hearing, the claim will be denied. The denial letter will state that the claimant failed to provide the requested documentation to support his or her claim. The letter will further state that prior to resorting to court action, claimant(s) must have exhausted their administrative remedies with the Board by furnishing factual documentation to the Board for review and have received a denial of the claim. The denial letter will also contain information on filing a court action as provided in Revenue and Taxation Code (RTC) section 6933 or comparable Property or Special Tax Code sections.

2. Insufficient documentation provided to support claim for refund.

Refunds will send a follow-up letter to the claimant requesting additional supporting documentation. If adequate documentation is not provided, Refunds will send a third letter to the claimant outlining Refunds' position and informing the claimant that it is Refunds' intention to deny the claim. The claimant will be informed that an appeals conference and/or Board hearing may be requested.

If the claimant responds by requesting an appeals conference and/or Board hearing or by reaffirming his or her position regarding the claim, the request for an appeals conference and/or Board hearing will generally be granted and Refunds staff will prepare a Summary Analysis of the issues involved in the claim. The claim file will be forwarded to the Business Taxes Case Management Section to process for an appeals conference and/or Board hearing, as appropriate. A request for an appeals conference and/or Board hearing may be denied if the claimant has already been provided with an appeals conference and Board hearing on the same issue, and has not submitted any additional arguments, documentation or evidence (Cal. Code Regs., tit. 18, § 5236).

If no response to the third letter sent by Refunds is received from the claimant within 30 days, a denial letter will be sent. The denial letter will contain information on filing a court action as provided in RTC section 6933 or comparable Property or Special Tax Code section.

3. Sufficient documentation provided to support claim for refund.

The claim will be granted (Cal. Code Regs., tit. 18, § 5235).

**B. Claimant Files a Claim for Refund and Requests an Appeals Conference and/or Board Hearing**

Refunds will notify the claimant that the claim has been received by sending an acknowledgment letter and, if necessary, request documentation to support the claim (Cal. Code Regs., tit. 18, § 5236).

1. No documentation provided to support the claim for refund.

Refunds will send a follow-up letter to the claimant referencing the acknowledgment letter requesting documentation. The claimant will be advised that if documentation is not provided within 30 days, the claim for refund will be denied. If the claimant fails to provide documentation but reaffirms his or her request for an appeals conference and/or Board hearing, Refunds staff will prepare a Summary Analysis of the issues involved in the case. The claim file will be forwarded to the Business Taxes Case Management Section to process for an appeals conference and/or a Board hearing as appropriate. However, requests for appeals conferences and Board hearings may be denied if the claimant has already been provided with an appeals conference and oral hearing on the same issue and has not submitted any additional arguments, documentation or evidence (Cal. Code Regs., tit. 18, § 5236).

If the claimant fails to provide documentation and does not reaffirm his or her request for an appeals conference or Board hearing, the claim will be denied. The denial letter will state that the claimant failed to provide requested documentation to support his or her claim. The letter will further state that prior to resorting to court action claimant(s) must have exhausted their administrative remedies with the Board by furnishing factual documentation to the Board for review and have received a denial of the claim. The denial letter will also contain information on filing a court action as provided in RTC section 6933 or comparable Property or Special Tax Code sections.

2. Insufficient documentation provided to support granting the claim for refund.

Refunds will send a follow-up letter to the claimant requesting additional supporting documentation. If adequate documentation is not provided, Refunds will send a third letter to the claimant outlining the Refunds' intention to deny the claim and asking whether the claimant wishes to reaffirm his or her request for an appeals

conference or Board hearing. This letter will also state that if no response is received within 30 days of the receipt of the letter, the claim will be denied.

If the claimant reaffirms his or her request for an appeals conference or Board hearing, Refunds staff will prepare a Summary Analysis of the issues involved in the claim. The claim file will be forwarded to the Business Taxes Case Management Section to process for an appeals conference and/or a Board hearing as appropriate. However, requests for appeals conferences and Board hearings may be denied if the claimant has already been provided with an appeals conference and oral hearing on the same issue, and has not submitted any additional arguments, documentation or evidence (Cal. Code Regs., tit. 18, § 5236).

3. Sufficient documentation provided to support claim for refund.

The claim will be granted (See Cal. Code Regs., tit. 18, § 5235).

These procedures are intended to ensure that all the claimants who desire an appeals conference and Board hearing will be allowed the opportunity.

### **III. DISTRICT RESPONSIBILITIES**

Claims received in district offices will continue to be handled in accordance with established policy and procedures.

When Refunds refers a claim for refund to a district office for investigation, the district office will investigate the claim and submit a report of its findings. This report may be in the form of an audit report, a Field Billing Order (FBO), or a memorandum to Refunds, as appropriate. If the claimant does not concur with the report, the district will, using the procedures in Audit Manual section 0207.10, prepare and submit a Report of Discussion of Audit Findings (BOE-836-A) to Refunds for processing.

It is important that the report of discussion include the following information:

- A. A detailed summary of the claimant's contentions on each disputed item and the staff's comments on the claimant's position.
- B. Whether the claimant has requested an appeals conference or Board hearing.
- C. If pertinent, a history of the district staff's dealings with the claimant (e.g., repeated failure to provide requested information).

#### **IV. OBSOLESCENCE**

This operations memo will become obsolete when the information contained herein is incorporated into the Audit Manual or other appropriate manuals and handbooks.

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